

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

## COMPLAINT

Hon. Commissioner of Patents and Trademarks  
Washington, D.C. 20231

July 3, 1999

Sir:

On 12/15/98 was filed an application in continuation under 37 CFR 1.62 to App. Number: 08/580,493 (filed 1995, Dec 29). On 12/30/98 was mailed from the Patent and Trademark Office, a Notice to Filing Missing Parts of Application (CPA) acknowledging that application filed on 12/15/98 was entitled a filing date under 37 CFR 1.53 (d) (1). This notice - which was giving a 2-month period for response, extendable under 37 CFR 1.136(a) - was curiously based on the assumption that 4 instead of 3 independent claims would have been filed in this CPA. Now this CPA was under 37 CFR 1.62 using the claims of a prior application which was itself not containing more than 3 independent claims. Besides no preliminary amendment was filed with the CPA and the request for PWC application announced that there were indeed no more than 3 independent claims.

On 03/02/99 was filed a protest to request reconsideration and recounting the independent claims of the CPA and therefore of the prior application. This protest was accompanied with the payment by check of the required filing fee (\$39) for a 4th independent claim and with the requested copy of the Notice to Filing Missing Parts of Application (CPA). This protest was supported by the submission of a whole copy of the claims of the prior application such as they were before the filing of the CPA. Petition so that said 4th independent claim would be designated to applicant among the 18 claims such as filed with the CPA was included. It was also petitioned that in case it would be impossible to designate any 4th independent claim, the \$39 fee could be refunded to the applicant.

The PTO was credited with the \$39 check amount on 03/12/99. At the end of last March, no 4th independent claim had been designated to applicant and no more a refund of the \$39 fee had been made.

On 03/29/99, applicant carefully filed (with a letter sent on 03/26/99 thru FedEx and arrived on 03/29/99 at 9.11 am) a preliminary amendment to the CPA and the payment by check of the \$55 fee for an extension under 37 CFR 1.136 (a) by one month of the 2-month period of time granted by the Notice to Filing Missing Parts of Application (CPA). The preceding letter which was sent to pay the \$39 fee by the end of this period by Express Mail from France arrived later. Again applicant petitioned to get refund of the \$39 fee, and consequently of the \$55 fee, as this last one would have been unnecessary if no \$39 fee would have been required, in case the CPA of 12/15/98 would contain no 4th independent claim as applicant was further maintaining.

The PTO was credited with the \$55 check amount on 04/05/99. But today no response has been given to applicant. No more a serial number for this CPA has been notified to him despite all required fees (even if there is an uncertainty about their justification) have been paid in due time.

Applicant solicits with deference the Commissioner to have investigated why no response has been given until now to applicant (despite his petitions of

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03/02/99 and 03/29/99) regarding the existence or the nonexistence of a 4th independent claim in the CPA of 12/15/98 and to have checked the status of this CPA.

Respectfully submitted

*Philippe BERNA*

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#### CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this paper of two pages including this one has been facsimile transmitted to the Commissioner of Patents and Trademarks Office on the date shown below.

Philippe Berna

*Philippe BERNA*

Signature

*07/04/99*

Date